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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. CC 2011 214

11 **RICHARD PAUL ARMSTRONG**
12 26506 Bouquet Canyon Road
13 Saugus, CA 91350

A C C U S A T I O N

14 Optometrist License No. OPT 9196

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Mona Maggio ("Complainant") brings this Accusation solely in her official capacity
19 as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

20 **License History**

21 2. On or about August 17, 1989, the State Board of Optometry ("Board") issued
22 Optometrist License No. OPT 9196 to Richard Paul Armstrong ("Respondent"). The Optometrist
23 License was in full force and effect at all times relevant to the charges brought herein. The
24 license will expire on December 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

1 4. Section 118, subdivision (b) of the Code provides that the suspension, expiration,
2 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
3 disciplinary action during the period within which the license may be renewed, restored, reissued
4 or reinstated.

5 5. Section 490 of the Code states, in pertinent part:

6 "(a) In addition to any other action that a board is permitted to take against a licensee, a
7 board may suspend or revoke a license on the ground that the licensee has been convicted
8 of a crime, if the crime is substantially related to the qualifications, functions, or duties of
9 the business or profession for which the license was issued.

10 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
11 discipline a licensee for conviction of a crime that is independent of the authority granted
12 under subdivision (a) only if the crime is substantially related to the qualifications,
13 functions, or duties of the business or profession for which the licensee's license was issued.

14 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take
16 following the establishment of a conviction may be taken when the time for appeal has
17 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
18 granting probation is made suspending the imposition of sentence, irrespective of a
19 subsequent order under the provisions of Section 1203.4 of the Penal Code."

20 6. Section 493 of the Code states:

21 "Notwithstanding any other provision of law, in a proceeding conducted by a
22 board within the department pursuant to law to deny an application for a license or to
23 suspend or revoke a license or otherwise take disciplinary action against a person who
24 holds a license, upon the ground that the applicant or the licensee has been convicted
25 of a crime substantially related to the qualifications, functions, and duties of the
26 licensee in question, the record of conviction of the crime shall be conclusive
27 evidence of the fact that the conviction occurred, but only of that fact, and the board
28 may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question."

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 STATUTORY PROVISIONS

6 7. Section 3090 of the Code states:

7 "Except as otherwise provided by law, the board may take action against all persons
8 guilty of violating this chapter or any of the regulations adopted by the board. The
9 board shall enforce and administer this article as to licenseholders, and the board shall
10 have all the powers granted in this chapter for these purposes, including, but not
11 limited to, investigating complaints from the public, other licensees, health care
12 facilities, other licensing agencies, or any other source suggesting that an optometrist
13 may be guilty of violating this chapter or any of the regulations adopted by the
14 board."

15 8. Section 3110 of the Code states, in pertinent part:

16 "The board may take action against any licensee who is charged with unprofessional
17 conduct, and may deny an application for a license if the applicant has committed
18 unprofessional conduct. In addition to other provisions of this article, unprofessional
19 conduct includes, but is not limited to, the following:

20 "(a) Violating or attempting to violate, directly or indirectly assisting in or
21 abetting the violation of, or conspiring to violate any provision of this chapter or any
22 of the rules and regulations adopted by the board pursuant to this chapter.

23 ...

24 "(f) Any action or conduct that would have warranted the denial of a license.

25 ...

26 "(k) Conviction of a felony or of any offense substantially related to the
27 qualifications, functions, and duties of an optometrist, in which event the record of
28 the conviction shall be conclusive evidence thereof.

1 "(l) Administering to himself or herself any controlled substance or using any of
2 the dangerous drugs specified in Section 4022, or using alcoholic beverages to the
3 extent, or in a manner, as to be dangerous or injurious to the person applying for a
4 license or holding a license under this chapter, or to any other person, or to the public,
5 or, to the extent that the use impairs the ability of the person applying for or holding a
6 license to conduct with safety to the public the practice authorized by the license, or
7 the conviction of a misdemeanor or felony involving the use, consumption, or self
8 administration of any of the substances referred to in this subdivision, or any
9 combination thereof."

10 9. Section 4021 of the Code states:

11 "'Controlled substance' means any substance listed in Chapter 2 (commencing with section
12 11053) of Division 10 of the Health and Safety Code."

13 10. Section 4022 of the Code states:

14 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in
15 humans or animals, and includes the following:

16 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
17 prescription,' 'Rx only,' or words of similar import.

18 "(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale
19 by or on the order of a _____,' 'Rx only,' or words of similar import . . .

20 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
21 prescription or furnished pursuant to Section 4006."

22 REGULATORY PROVISIONS

23 11. California Code of Regulations, title 16, section 1517 states, in pertinent part:

24 "For the purpose of denial, suspension, or revocation of the certificate of registration of an
25 optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act
26 shall be considered to be substantially related to the qualifications, functions, and duties of an
27 optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist
28

1 to perform the functions authorized by his/her certificate of registration in a manner consistent
2 with the public health, safety, or welfare.”

3 **COST RECOVERY**

4 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
8 renewed or reinstated.

9 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

10 13. “Codeine,” is a Schedule II controlled substance as designated by Health and Safety
11 Code section 11055, subdivision (b)(1)(g) and is categorized as a dangerous drug pursuant to
12 section 4022.

13 14. “Amphetamine,” is a Schedule II controlled substance pursuant to Health and Safety
14 Code section 11055(d)(1) and dangerous drug per Section 4022 of the Code.

15 15. “Benzodiazepine” is a Schedule IV controlled substance pursuant to Health and
16 Safety Code Section 11057(d) and a dangerous drug per Section 4022 of the Code. In general,
17 benzodiazepines act as hypnotics in high doses, anxiolytics in moderate doses, and sedatives in
18 low doses.

19 16. “Opiate” is a Schedule II controlled substance pursuant to Health and Safety Code
20 Section 11055(b)(1) and dangerous drug per section 4022 of the Code.

21 17. “Vicodin” is the brand names for a narcotic, which contains a combination of
22 Acetaminophen (aka APAP) and Hydrocodone. This narcotic is generally prescribed to treat
23 moderate to severe pain. It is designated as a Schedule II controlled substance per Health and
24 Safety Code section 11055(b)(1)(I), and categorized as a dangerous drug per section 4022 of the
25 Code.

26 18. “Diazepam” is a schedule IV controlled substance as designated by Health and Safety
27 Code section 11057(d)(9) and is a dangerous drug per section 4022 of the Code. Diazepam is a
28 psychotropic drug for the management of anxiety disorders or for the short-term relief of the

1 symptoms of anxiety. It can produce psychological and physical dependence and it should be
2 prescribed with caution particularly to addiction-prone individuals (such as drug addicts and
3 alcoholics) because of the predisposition of such patients to habituation and dependence.

4 19. "Nordiazepam" is a Schedule IV controlled substance as designated by Health and
5 Safety Code section 11057(d) and the Federal Code of Regulations, title 21, section 1308.14,
6 subdivision (c)(38). Nordiazepam is a benzodiazepine. Nordiazepam has anticonvulsant,
7 anxiolytic, muscle relaxant, and sedative properties.

8 20. "Oxazepam" is a Schedule IV controlled substance pursuant to Health and Safety
9 Code section 11057(d)(23) and the Federal Code of Regulations, title 21, section 1308.14.
10 Oxazepam is a benzodiazepine used for the treatment of anxiety and insomnia and to control the
11 symptoms of alcohol withdrawal.

12 21. "Temazepam" is a Schedule IV controlled substance pursuant to Health and Safety
13 Code section 11057(d)(29). Temazepam, sold under the trade name Restoril, is a dangerous drug
14 per section 4022 of the Code. Temazepam is generally prescribed for the short-term treatment of
15 sleeplessness in patients who have difficulty maintaining sleep. In addition, Temazepam has
16 anxiolytic (anti-anxiety), anticonvulsant, and skeletal muscle relaxant properties.

17 FIRST CAUSE FOR DISCIPLINE

18 (Conviction of a Substantially Related Crime)

19 22. Respondent is subject to disciplinary action under section 3110, subdivision (k), and
20 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1517 for
21 unprofessional conduct in that Respondent has been convicted of a crime substantially related to
22 the qualifications, functions or duties of a licensed optometrist.

23 a. On April 15, 2011, after pleading nolo contendere, Respondent was convicted of one
24 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving while under
25 the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the State of*
26 *California v. Richard Paul Armstrong* (Super. Ct. Los Angeles County, 2011, No. 0SY09233).
27 The Court placed Respondent on 36 months probation, with terms and conditions.

b. The circumstances surrounding the conviction are that on September 11, 2010, during an investigation of a single vehicle traffic collision by the Palos Verdes Estate Police Department, Respondent was contacted. The officer detected a strong odor of an alcoholic beverage emitting from the Respondent. Officers asked Respondent to exit his car. He was observed to have glossy eyes, slurred speech, stumbled twice as he exited the vehicle, and needed to use the side of his car to support himself. After Respondent was arrested, he admitted to taking Codeine. Respondent submitted to a chemical blood test, which returned positive for Amphetamines, Benzodiaepines, and Opiates. On or about September 21, 2010, the test indicated a Blood Alcohol Content ("BAC") of 0.11%. On or about February 15, 2011, a confirmatory test returned positive for hydrocodone (Vicodin). On or about February 23, 2011, the test returned positive for Diazepam, Nordiazepam, Oxazepam, and Temazepam.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol, Controlled Substances, and Dangerous Drugs)

23. Respondent is subject to disciplinary action under section 3110, subdivision (1) for unprofessional conduct in that on or about September 11, 2010, Respondent used alcoholic beverages, controlled substances, and dangerous drugs to an extent or in a manner dangerous or injurious to himself, another person, or the public. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 22, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Any action or conduct that would have warranted the denial of a license)

24. Respondent is subject to disciplinary action under section 3110, subdivision (f) in that Respondent's action or conduct would have warranted the denial of a license. Complainant refers to, and by this reference incorporate, the allegations set forth above in paragraphs 22 through 23, inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Violating or Attempting to Violate Provisions of the Chapter)

25. Respondent is subject to disciplinary action under section 3110, subdivision (a) in that Respondent violated or attempted to violate, directly or indirectly assisting in or abetting the


1 violation of, or conspiring to violate any provision of this chapter or any of the rules or
2 regulations adopted by the board pursuant to this chapter. Complainant refers to, and by this
3 reference incorporate, the allegations set forth above in paragraphs 22 through 24, inclusive as
4 though set forth fully.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Board issue a decision:

- 8 1. Revoking or suspending Optometrist License No. OPT 9196, issued to Richard Paul
9 Armstrong;
- 10 2. Ordering Richard Paul Armstrong to pay the Board the reasonable costs of the
11 investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
- 12 3. Taking such other and further action as deemed necessary and proper.
- 13

14 DATED: August 5, 2013

15 
16 MONA MAGGIO
17 Executive Officer
18 State Board of Optometry
19 Department of Consumer Affairs
20 State of California
21 Complainant

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